

In the Supreme Court of the United States.

MARTIN B. HAYS, APPELLANT, }
v. } No. 186.
THE UNITED STATES. }

STATEMENT, BRIEF, AND ARGUMENT.

This suit was instituted in the Court of Private Land Claims on the 24th day of September, 1892, by Martin B. Hays, claiming to be the owner by purchase of what is commonly called the Alamillo or Antonio Chavez land grant, situate in the county of Socorro and Territory of New Mexico. To sustain the claim, plaintiff relied on mesne conveyances and original title papers from the Mexican Government to one Antonio Chavez. These papers in Spanish are found in the record (pp. 7-11), immediately followed by translations thereof (pp. 11-14).

It appears from these title papers that one Antonio Chavez, a citizen of the Republic of Mexico, and resident of the province of New Mexico, stated that he found himself very much crowded in the possession of his property and appurtenances, as well in the pasturing of his stock as in the extension of agriculture; and desiring

to move to another place of greater capacity, for the purpose of enlarging his business of stock raising and agriculture, he asked that there should be assigned and adjudged to him the tract called the San Lorenzo Arroyo, and he describes the boundaries of said tract as follows:

On the south the ranch of Pablo Garcia, on the north the little table-land of the Alamillo, on the east or west the Jara (Willow) Spring, on the west or east the river known as the Del Norte; stating also that the land referred to was so uninviting, uncultivated, desolate, and bleak that he believed that no obstacle existed to the granting of the same; stating also that by the same he would contribute by cultivation and improvement to the benefit and security of the surrounding individuals, and that there would result to the province a great assistance and relief, inasmuch as at this point would be prevented the incursions, ambushes, and assaults of the enemies to the quiet and peace of the community, and that it would stop the exportation, deterioration, and decrease of the live stock which said enemies had left with the inhabitants, closing the prayer in the usual form. (Rec., 11.)

This petition was directed and delivered to the secretary of the most excellent provincial deputation of Santa Fe, of New Mexico. The petition bears no date, but on the third day of February, 1825, being the sixteenth day of the session of the provincial deputation, the petition was taken up by said provincial deputation and it was ordered that the document should be passed to the political chief of the Territory, in order that he may report whether the land petitioned for pertained to that of the

settlements of Socorro and Sevilleta, and, if so, whether it might not, on account of their great extent, be granted to the petitioner without injury to third parties. (Rec., 12.)

On the 25th of February, 1825, a report was made by Bartolomé Baca, the political chief of the Territory at the time, in which he says :

It is certain that the application of Antonio Chavez, a resident of Belem, refers to a part of the tract of Socorro, and a portion of that which belongs to Sebilleto, but it is also certain that, on account of the great extent of both tracts and it being where their possessions separate, far from being injurious to those settlements, there results to them a benefit, for the reasons which I will proceed to state, as follows : The first and most important is the increase of the population to such a degree that it will afford means to the said settlements of Socorro and Sebilleto by guarding a portion of the entrances and exits of the savages, who, though at peace, come to rob, as those at war endeavor to harass the same settlements or those surrounding or near them. The second, that to the residents of the said new settlements there remain most ample lands for pastures, fields, uses, and transit, so that the land which may be granted to Chavez will cause them not the least scarcity, as on another occasion that granted to Sabinal did not to Belem, or even to Sebilleto itself, though it was an appurtenance of the first. The third, that making to the said Chavez the grant that he asks would produce the emulation desired, so that the desirable vacant lands of the Bosque del Apache and San Pascual may be settled, which lands upon the one and the other bank present the greatest advantages to stock raisers and farmers ; for, although they may have lands in the center of other settlements, these, from

their age, are full of locusts and worn out by constant cultivation. Fourth. That the petition of Antonio Chavez has in it more of necessity than of affectation or covetousness, inasmuch as from that individual the Navajo tribe has taken the greater part of his live stock, and he requires a tract from which, through its productiveness, to reestablish himself from the losses he has suffered during the war with the said tribe. Fifth. That the slightest damage not resulting to Socorro and Sebilleta from the grant which Chavez asks, it is very probable that the people there, for their poverty is well known, will have a place where they may get employment which may furnish them subsistence, and which (like their neighbors, who are subject to the same almost deplorable condition) they lack. (Rec., 12.)

For all of which reasons it was shown that the petition of Chavez should be acceded to at once, and to which the people of the settlements mentioned would make no objection, etc. (Rec., 13.)

On the 5th of March, 1825, the report of Bartolomé Baca having been called up in the provincial deputation, together with that of one Pedro José Perea, it was resolved that there be adjudged to the two individuals mentioned the land asked for, filing in the office of the secretary of the honorable provincial deputation the original *expedientes*, as is provided, ordered, and customary in similar cases, and furnishing the parties interested the corresponding *testimonio*, which will serve as title, and with which Antonio Chavez will present himself to the alcalde of Socorro, that he may place him in possession. (Rec., 13.)

On the 20th of April, 1825, Antonio Chavez having presented the *testimonio* of the proceedings theretofore had by the provincial deputation to Juan Francisco Baca, the constitutional alcalde of the jurisdiction of Socorro, said Baca proceeded to place Chavez in possession of the property conceded by the provincial deputation, and after the usual formalities declared the boundaries to be: On the north, where the small tableland of the Alamillo begins; on the east, the Del Norte River; on the south, a small forked cedar tree in the middle of the bend of the Pablo Garcia ranch, commonly so called, this little cedar being on the same side with the main road which is traveled toward Socorro, on the side of the meadow; on the west, the spring known as the Jara (Willow) Spring. The document was executed and delivered to Antonio Chavez. (Rec., 14.)

In October, 1850, the property was conveyed by the widow of Antonio Chavez to Rafael Luna, Anastacio Garcillo, and Ramon Luna.

No question was raised as to the genuineness of the original title papers. It was contended on behalf of the Government that no such possession and cultivation of the property as was evidently intended, judging from the title papers, was ever performed prior to the treaty; that the west boundary of the grant, as claimed at the present time, is incorrect, and many miles farther west and north than the real west boundary; that at the time the alleged grant was made the provincial deputation had no power or authority to make the same, and in attempting to do so its acts were void and without effect, and

consequently did not bind the Mexican Government and does not bind the United States.

On the trial of the cause, the plaintiff introduced as a witness Elias Brevourt, who stated that he had lived in the Territory since 1850; that he had known Anastacio Garcia first in 1858, at which time he was living at Alamillo, and that he claimed the grant and was living on it. (Rec., 24.)

The plaintiff was sworn in his own behalf, and stated that he first saw the grant in 1873, and that Anastacio Garcia, who claimed to own a third, was living on it; that Ramon Luna's heirs and Rafael Luna claimed to own the other two-thirds. He knew Anastacio Garcia very well. That he (plaintiff) owns an interest in the grant, and acquired title through Bond, Higgins, and Arms. He also testified:

Q. Do you know the boundaries of the grant?

A. Those that are relied on in the papers, I do, and have been to them all, pointed out and located on the earth's surface. I protested against this survey and had it resurveyed, and changed the boundaries after the title passed to me. (Rec., 26.)

This closed the case in chief for the plaintiff.

Jose Antonio Baca, a witness on behalf of the Government, testified that his full name was Jose Antonio Baca y Pino, and that he would be 80 years old in June; that he had lived in Socorro and that immediate vicinity all his life; that Juan Francisco Baca was his brother, and that he had held the position of alcalde in that community. He knew the Antonio Chavez grant; had been over it and knew the springs on it; that there were two

springs on it, the Ojo de la Xinsa and the Ojo de la Jara (Willow Spring); that the spring formerly called Ojo de la Jara is now known by the name of Ariveche, and he thinks since about the year 1848, the name being changed then because a man by the name of Ariveche had been killed there about that time. He stated that when he was a young man this same spring was known as the Ojo de la Jara (Willow Spring) because of the great quantity of willows that grew around it.

The other spring to the south is called the Ojo de la Xinsa. He stated, when asked as to the cultivation of the grant, that he never knew of it being cultivated; that the ditch from the river, under which cultivation took place, was made by the Lunas and Garcias, and that there was never any cultivation of the grant until they took the *acequia* out. He knew that Antonio Chavez lived at Belen, and that he died at Sabinal; that he never lived on the grant, but he had a cattle ranch there, which was down close to the river. The witness stated that he had occupied the positions of constitutional alcalde, justice of the peace, clerk and secretary of the *ayuntamiento*, probate judge, and several other official positions; that when he was a boy the people would never go beyond the mountains, because of the Indians, and when they made excursions after the Indians they would go as far as the La Xinsa and La Jara springs and return. He stated that he never knew of people going west of the Bear Mountains to find the La Jara Spring until a very recent date, as it was in the Navajo country (in La Gallina). This was substantially the testimony of the witness. (Rec., 26-31).

Cayetano Tafoya, a witness on behalf of the Government, testified that he lived at Polvareda and was about 66 or 67 years old; that he was born there, and knew Anastacio Garcia in his lifetime, and, when quite young, he knew Antonio Chavez and also Juan Francisco Baca; that he knew where the Antonio Chavez grant was, and knew the springs on the grant, and that they were now called—one San Lorenzo, another Ariveche, and another La Xinsa; that the one now called Ariveche was formerly called Ojo de la Jara (Willow Spring); that he had been there while it was called by that name (Ojo de la Jara); that the name of the spring was changed because a man had been killed there by the name of Ariveche. As to the cultivation, he said that at the spring La Xinsa the purchaser cultivated a small patch, and that the first cultivation he knew of on the Rio Grande was after the irrigating ditch, now called the Alamillo, had been dug by himself for Rafael Luna, Ramon Luna, and Anastacio Garcia, and that prior to the digging of this ditch there was no cultivation on the river; that there was no cultivation on the grant prior to this time and the grant was not occupied by any one; that he had been over the tract of land west in scouting expeditions after the Indians, and that he never heard of the spring beyond the Bear Mountains called the Ojo de la Jara (Willow Spring).

On cross-examination he stated that he had been at the cattle ranch on the grant occupied by Antonio Chavez, and that he heard that Chavez had transferred the possession of the grant to Garcia and the Lunas, and he

knew Garcia had lived on the grant; that it was customary in that country for herders to pasture their stock wherever grazing and water could be obtained, and that they pastured from San Lorenzo below to the side of the river, but he said that he had not seen a map of the grant until the morning he testified. He stated that he knew Garcia claimed the boundary on the east to be the Rio Grande River and on the west the Ojo de la Jara, but he declined to say it was the La Jara in the Oso (Bear) Mountains. He did not know the spring in the Bear Mountains. He had seen Chavez pasture stock on the grant next to the river; that the section of country was overrun by the Indians. (Rec., 32-35.)

L. M. Brown, a witness on behalf of the Government, testified that he lives at Socorro, and was United States deputy surveyor; had examined the topography of the country of what is called the Antonio Chavez or Arroyo de San Lorenzo grant more than once, and had occasion to make a topographical survey of it; had examined it recently in connection with the two witnesses, Antonio Baca and Cayetano Tafoya; that he knew the location of the various springs upon the grant; knew the location of the La Xinsa, the Ariveche, and the La Jara Spring, in the Bear Mountains; also the arroyos of San Lorenzo and Salado and the location of the Bear Mountains. The witness then testifies from the map which is shown in the record (Rec., 12), and locates the various springs and their relative positions and distances apart. He stated that at the spring now called Ariveche there is a quantity of willows; that he has been to the spring that is

now designated the northwest boundary corner of the grant, and that there are a few willows at that spring, but a great many more willows at the Ariveche Spring than at the La Jara Spring in the Bear Mountains—five times as many.

As to the present state of cultivations of the grant, he stated that there were some Americans who had farms there, claiming it as Government land; there may be in cultivation along the river probably 175 acres, and at La Xinsa Spring probably 10 acres; that west of the river was put in cultivation during the last six years. He has known the grant since 1881, but all the cultivation west of the river has been since he knew it. He stated he had made a topographical map of the grant for Mr. H. M. Bond at the time he purchased an interest in the grant, and that he ran to La Jara Spring as indicated in the former Government survey; that he followed that survey but did not find the monuments as laid down there, but that he did find the La Jara (Willow) Spring at the northwest corner of the survey formerly made; that he did not know of the time that an error had been made in selecting that spring as the west boundary. He stated to Judge Bond that he found a mistake of a quarter of a mile in the survey. He stated that the La Jara Spring at the northwest corner of the grant is not the only one on the grant known by that name, for aside from the two witnesses, Baca and Tafoya, he has heard other people speak of it by that name in a general way; that at the time he made the survey, he knew of two La Jara (Willow) Springs, but did not know of the

location of one of them, and he was only sent out to retrace the Government survey; that at the time he made the survey for Judge Bond, the La Jara at the northwest corner was the only one he knew of in relation to the grant; after getting through with the survey he turned it over to Judge Bond. (Rec., 36-38.)

The Government then offered the testimony of Juan Francisco Baca, the alcalde who delivered possession of the grant to Antonio Chavez (Rec., 17, 108), taken before the surveyor-general of the Territory, who testified that he was 85 years old in August, 1873; that he knew of the sitio of Alamillo or Arroyo of San Lorenzo, and had known it since 1815 or 1816, and that it was granted to Antonio Chavez; that he was constitutional alcalde, and the departmental deputation sent him an order to place Chavez in possession of the sitio about the year 1822, but he is not certain of the date; that it was bounded on the north by the Mesita del Alamillo, where it leaves the river, on the east by the Rio del Norte, on the south by the ranch of Pablo Garcia, the line running toward a forked cedar tree about a mile and a half from the river. He does not remember the western boundary. He stated that Antonio Chavez took possession of it and kept it until his death, but his heirs sold it to Anastacio Garcia and the Lunas, and they have occupied it up to that time.

The deposition of Hiram G. Bond was read in evidence by the plaintiff, and consists principally of testimony as to the representations made to him by Anastacio Garcia at the time he purchased the grant. As this

purchase was not made until 1873, and the Government is in no way bound by the representations made by the vendor to the purchaser, it is not deemed necessary to abstract the deposition.

Melquiades Luna, a witness on behalf of the Government, testified, by leave of court, that he was 35 years old, and lived at Socorro; that he is the son of Rafael Luna, and has lived at Socorro for thirteen years; he was acquainted with a tract of land lying north of Socorro, called the Antonio Chavez grant, and has known it for thirty years; been over it a little. He did not know whether he had ever heard of stock on the grant or not; had ranched on what they called the Carbon Piedra, near Santa Rita. Knows the names of the springs on the grant; they are La Jara or Ariveche, Lorenzo, and another spring. Never heard his father say anything about the boundaries of the grant, or heard him mention the names of the springs. Knew Anastacio Garcia in his lifetime; knew that he was one of the owners of the grant, and had conversed with him about the lines during his lifetime; had heard him say what the west boundary of the grant was, and that the Ariveche Spring was the west boundary; was there at the grant at the time, and that was in 1883. The Ariveche Spring is a little north from La Xinsa. Knows that there is a Willow (La Jara) Spring lying west of the Santa Rita, and knows that it is now called La Jara; that there are some willows at the present Ariveche Spring.

On cross-examination witness stated that he sold his interest in the grant to Jose Maria Luna. At the time

he had his conversation with Anastacio Garcia they were out rounding up cattle about 8 miles from La Xinsa; he had ranched there two years, but did not know whether it was on the grant or not; that his ranch was 6 or 8 miles west of the Arroyo Ariveche. (Rec., 50-56.)

Ethan W. Eaton, a witness on behalf of the Government, testified that he was 66 years old, lived in Socorro, and had lived in the Territory since 1849; knew where the Antonio Chavez land grant was situated; knew Anastacio Garcia in his lifetime; had a conversation with Garcia with reference to the boundaries of this grant somewhere about the time the grant was sold or bargained for; and as to the boundaries Mr. Garcia stated on various occasions that they were attempting to survey more land than they had sold. The matter came up several times, but being of no particular interest to him he did not inquire into it; that the conversation came up on account of the points to which the Government survey was made, and he remembered one point because it was mentioned frequently, and that was that the Ojo de la Jara that they were claiming as the northwest corner of the grant was not the Ojo de la Jara that was intended in the grant. (Rec., 56.)

Luciano Chavez, a witness on behalf of the Government, testified that he was 49 years of age and lived at Polvadera, in Socorro County, and knew Anastacio Garcia in his lifetime; knew Martin B. Hays, the claimant for the grant; knew him about seventeen or eighteen years ago; saw him first at his (witness') house; he came with Anastacio Garcia and two witnesses to ask him to swear

with reference to some statements with reference to the lines of the Pablo Garcia ranch; they were Pablo Chavez and Antonio Garcia; witness was a justice of the peace at the time. He took the affidavits of several witnesses for Garcia and Hays; took the affidavits of Rinaldo Chavez and Francisco Chavez y Marques for Garcia and Hays; had a conversation with Rinaldo Chavez and Anastacio Garcia at the time about the west boundary of the grant; after the witnesses had stated under oath what the line of the Pablo Garcia ranch was, Hays and Anastacio Garcia went away.

When they came back a conversation took place between Rinaldo Chavez, witness, and others. The conversation was that Rinaldo Chavez stated his father told him that about 1828 or 1830 the grant of Antonio Chavez was made; that the grant was from the spring that we this day call Ariveche, and from that place east to the river; and then Rinaldo Chavez asked him how it was that they state beyond this plain is the La Jara; and then the father of Rinaldo Chavez said they wanted to steal this and rob this, and they were at the Ariveche, and his father said that this place where they were was the Ojo de la Jara; it has been known by that name from all time till Ariveche was killed; before that time it was known as the Ojo de la Jara; at this time Don Anastacio Garcia came into the room where they were and heard the conversation, and said to Don Rinaldo Chavez, "Shut up your mouth," and Mr. Chavez did so. Could not state whether Hays was present in the room or not, but he was about somewhere. Witness was shown, on cross-examination, the depositions

taken by him of Rumaldo Chavez and Francisco Chavez y Marquez, and recognized them as being in his handwriting. (Rec., 57-59.)

In rebuttal, plaintiff offered in evidence the affidavits filed before the surveyor-general of Rumaldo Chavez (Rec., 109, 110), in which he testifies as to the boundaries of the grant, and that La Jara Spring, the west boundary, was about 30 miles from the Rio Grande, more or less, and of Francisco Chavez y Marquez, who testified that he has known the San Lorenzo Alamillo grant for forty years, but does not know the location of the La Jara Spring, which formed the west boundary of the grant.

Pablo Padilla, a witness on behalf of the plaintiff, testified in rebuttal that he was 57 years old and had lived at Polyadera all his life; knew Antonio Chavez and knew of his land grant; it extended to the La Jara Spring; knew the Ojo de la Jara, which was on the west boundary of the grant; had seen it often, and it lies west of the Bear Mountains; knew the arroyo of the same name near the spring; that at said spring there was some rushes and willows; that the first time he knew it was in 1862; there were willows on both sides of it; knew Anastacio Garcia well. He was asked if he knew the land claimed and occupied as the Antonio Chavez grant, and replied: "Yes; I have not seen it personally, but I have known that they claimed it as far as La Jara." Knew the land since 1862; had heard of a man named Ariveche, but did not know him personally; in the year 1858 witness was camping with his father at the Ojo de la Xinsa, and went with his father about a mile farther north, who told him that that

was the Cañada Ariveche, where a man of that name had been killed, and that he had always from a boy heard that cañada called by that name until a short time ago, when he had heard the term La Jara applied to it; that in the Cañada Ariveche there is a good deal of wood (*palo blanco*); does not know of a spring being in the Cañada Ariveche.

On cross-examination witness testified that he knew the Ojo de la Jara in 1862, and that it was in the Navajo country beyond the Bear Mountains; witness was unable to state by what name the Arroyo Ariveche was known before the man was killed there; he knew it by the name of Cañada Ariveche since the year 1858; did not know what it was called before; says his father stated to him that it got its present name from a shepherd being killed there; had been out very frequently since 1858 after Indians; was at La Jara spring in 1862 in pursuit of the Indians. (Rec., 59-63.)

Nepomoceno Aragon, a witness on behalf of the plaintiff, testified in rebuttal, that he lives at Polvareda and does not know how old he is; is a relative of Luciano Chavez; knew the Antonio Chavez grant; it was south from the Cebolleta; knew Anastacio Garcia in his lifetime, and knew from reputation what the west boundary of the grant was, but had never been to it; it was called the La Jara Spring; he had known it since 1862; that it is northwest of the Bear Mountains; when he first knew it there were a good many willows around it; knew the Arroyo Ariveche also; knew the spring in that *arroyo*, which is this day called the Ariveche Spring, because he had heard it stated that a man by the name

of Ariveche had herded sheep there; says there are no willows there around the spring, at least he has not seen any; knew the spring in the Cañada Ariveche since 1857 or 1858 and there were never any willows there; knows the Cañada Ariveche from the spring to its mouth.

On cross-examination, he stated that he knew how the Cañada Ariveche got its name, and it was because a man of that name had herded sheep there, and that there was no other water in that country except in that Cañada; knows where La Xinsa is; did not know whether Ariveche was ever known by any other name; does not know whether Ariveche got its name on account of a man being killed there, and did not know it ever had any other name; never heard anybody say that it had a name prior to Ariveche herding sheep there; says there are no willows there; was herding at the spring west of the Bear Mountains about four years ago.

Pablo Sanchez, a witness on behalf of the plaintiff, testified in rebuttal that he is 55 years of age, lives at Polvadera, and has lived there since 1851; knows the land called the Antonio Chavez grant; has seen the map; knows the western boundary of the grant; says it is from the Ojo de la Jara in the direction to the Pueblo Spring; has often been at the La Jara Spring at the western end of the Antonio Chavez grant; been there many times, but does not remember how many; the spring is north of the Bear Mountains, where the Cerro del Oso begins; knows the La Jara Arroyo west of the Ojo and knows the mountain of La Jara; the first time he saw the spring there were some willows growing there, some oaks, some cedars,

and other woods, a grove, and there were many willows; saw the spring about a year ago, there were not then as many willows as formerly, because stock had destroyed them; knows the Cañada Ariveche, and knows the spring that people call the Ojo del Ariveche; first knew of it in about 1854 or 1855; said there was not much water in it. (Rec., 68-74.)

Jesus Baca, a witness on behalf of the plaintiff, testified in rebuttal; testified that he was 75 years old and lives at Sabinal; knew Antonio Chavez; he was the master of the witness; Chavez lived at Belen; witness was the chief herdsman of Antonio Chavez and there were seven with himself and fourteen in all. They were all armed on account of the Navajoes; during the time he was a herder and when he became a corporal of the herders he was shown the boundaries of the ranch of Alamillo; that the Ojo de la Jara is on the north of the Cerro del Oso; that the arroyo and spring are about $2\frac{1}{2}$ miles from Santa Rita, from the north to the west from Santa Rita; when he first knew it it was very thick with willows. Knew the cañada called the Cañada Ariveche, and had known it for twenty years; it was called by that name because a man was killed there of that name about twenty-two years ago; he was an Apache; that before Ariveche was killed the shepherd boys called the spring, which is inside the Antonio Chavez grant, Chupidero, because the quantity of water there was very small and only sufficient to be taken and put in barrels, and not sufficient to water burros. It was never called La Jara; that there never had been any willows there and never would be; was in the employ of Antonio Chavez eight years and nine months; that

twenty-five years after he left the employ of Antonio Chavez this man Ariveche was killed: he and his fellow-herders defended the grant against the Indians and Spanish. In cross-examination the witness stated that he had herded sheep all over the grant; had herded in the Cañada Ariveche and at the spring called Chupidero. He stated as follows:

Q. You used to herd the sheep out in the Ariveche Cañada, didn't you?

A. In those days there was no Ariveche; it was the Cañada of Don Antonio, and he had a right there.

Q. What did he call it before then?

A. The Cañada.

Q. That was the only cañada on the grant, was it?

A. Yes; he gave it the name of Ariveche after he was speared with arrows.

Q. There are no other cañadas on the grant?

A. There are very many of them.

Q. They didn't have any names, did they?

A. They have various names.

Q. Will you give them?

A. Yes; Ojo de la Jara first, Rancho del Chado, Rancho de la Trejo, Ojo del Oso, La Cañada del Agua, Padero Babijuilla. I am stating the cañadas that had water.

In pasturing stock, witness stated he had pastured as far as Las Cruces on the riverside and as far as the Rio Grande, and had pastured clear on to the river Pecos, and that they were not confined to any land grant. (Rec., 74-79.)

The plaintiff was called in his own behalf, and testified that Anastacio Garcia never said in his presence or hearing that the boundary of the Antonio Chavez grant on

the west was the spring called the Ariveche, or any other spring in that community; that he never had anything to do with fixing the Ojo de la Jara on the western side of the grant. Witness remembers meeting Anastacio Garcia and other Mexicans at the house of Luciano Chavez seventeen or eighteen years ago. He was out there at the time, probably in 1878, upon a resurvey being ordered of the grant. He called the surveyors out to establish the southeast corner of the Pablo Garcia ranch. There was no discussion about the Ojo de la Jara Spring. He first entered into negotiations for the purchase of the grant with Anastacio Garcia and Rafael Luna, and met Anastacio Garcia at his house a number of times. He remembered on one occasion asking Anastacio Garcia how far it was to the La Jara Spring, and he said, "Poniente," and pointed to the west, right where it is located in the Bear Mountains. He said it took a day's ride on a mule to go to it, but did not know anything about miles. Witness had been in the vicinity of the Ojo de la Jara a number of times. It is quite a good spring, with a large growth of willows. Went on the grant first in 1873; and purchased it in 1873 or 1874. The grant was not surveyed at the time. Never heard of any Ojo de la Jara Spring except in the Bear Mountains; never heard of the Cañada Ariveche.

It may be remarked here that every witness that the plaintiff and the Government has introduced has identified the Cañada Ariveche, and Mr. Hays has been the owner of the grant since 1874; has been over it twenty-five or thirty times; has surveyed it at his own expense and twice at the expense of the Government, and has

never heard of the Cañada Ariveche. It is therefore deemed unnecessary to abstract his testimony further. It will be found in the record (pp. 79-86).

L. M. Brown was recalled on behalf of the Government for the purpose of contradicting the testimony of Pablo Sanchez on behalf of the plaintiff.

Luciano Chavez was recalled on behalf of the Government and testified that he knows the Ariveche Spring situated on the grant, and has known it since 1853, 1854, or 1855; was out there with his grandfather; that there were plenty of willows there then, but they have since been eaten down by cattle; has known the Ariveche Spring by another name, La Jarito or La Jara (Willow); knows also the Lorenzo; there is a much larger growth of willows around the Ariveche than at Lorenzo, and about four times as much water; as many as two thousand sheep had been watered in the Canada Ariveche. (Rec. 87-88.)

This is all the testimony in the case.

BRIEF AND ARGUMENT.

1. The grant is void for want of authority in the provincial deputation to make the same.
2. The action of the provincial deputation upon the report of the governor, made at its request, was without warrant or authority of law, and void.
3. Between August 18, 1824, and November 25, 1828, there was no provincial official or official body authorized to dispose of the public lands of the Republic of Mexico.
4. The grant should be rejected for failure on the part of the original grantee to comply with the promises made

in his petition, and the requirements of settlement and cultivation.

5. If the grant is a valid grant, the west boundary is incorrectly located by the plaintiff.

It was said by this court in the case of *United States v. Vallejo* (1 Black, 541) that "the decree of the Spanish Cortes of 1813, as well as all other laws of Spain in relation to the disposition of Crown lands, were inapplicable to the state of things which existed in Mexico after the revolution of 1820, and could not have continued in force there unless expressly recognized by the Mexican Congress." I have not been able, in my investigation of these questions, to discover a continuation of the former laws subsequent to the declaration of independence on the 22d of February, 1821, at Dolores. It is true that in 1820 King Ferdinand reestablished the constitution of 1812 for the government of Mexico, but upon independence, and after the Regency had been overthrown by Iturbide and the promulgation, on the 4th day of January, 1823, of the imperial colonization law, it must have necessarily followed that the former laws for the disposition of the public lands were by that act repealed. This law, on April 11, 1823, after the abdication of Iturbide, was also repealed, and the repealing act of the succeeding provisional government stated specifically that it was repealed and suspended *until a new resolution on the subject could be enacted*. So that it is quite clear that on April 11, 1823, there was no general law of Mexico for the disposition of the public lands. It is true that the national government could have provided for the disposition of the same, but it seems that nothing was done

in respect to these matters until August 18, 1824, when what is known as the colonization law of Mexico was promulgated (Reynolds, 121). The sixteenth article of this law is as follows:

The Government, under the principles established in this law, shall proceed to colonize the Territories of the Republic.

It does not seem that the executive branch of the Government took any steps to carry into execution the powers conferred by this article of the colonization law until November 21, 1828, when a very complete system of regulations was promulgated, conferring authority upon the governors of the Territories, with the approval of the Territorial deputations, to grant the public lands subject to the restrictions imposed by the colonization law under which the regulations were issued. The twelfth article of the colonization law (Reynolds, 122) limits the amount of land that may be united as property in the hands of a single individual, and has been commonly called the "Eleven-league" clause. This grant, then, even if it could have been made under the provisions of the colonization law of August 1, 1824, is in conflict with this section; and, as has been decided by this court, this law was a limitation upon the powers of the governor, and he could not have united in the hands of Antonia Chavez more than 11 leagues of land; yet, according to the preliminary survey made under the act of July 22, 1854, the grant includes over 138,000 acres.

It has been held, in the case of *United States v. Vallejo* (1 Black, 541), and in *United States v. Vigil* (13 Wallace, 449), that the only law regulating the disposition of the

public lands in the Territories subsequent to independence was the law of August 18, 1824, and the executive regulations promulgated thereunder of November 21, 1828. With this historical statement of the existence of the laws for the disposition of the public lands within the Territories I do not entirely agree. But for the purposes of this case, the grant having been made subsequent to 1824 and prior to 1835, the statement is accurate. I am perfectly satisfied that this court was misled by the investigation made by the Government's agent in holding that the law of August 18, 1824, was in force in Mexico subsequent to the constitution of 1836, but there can be no question but that it was the only law in force in the Territories from the date of the repeal of the imperial colonization law on the 11th of April, 1823, to the date of the abolition of the constitution of 1824 by the provisional constitution of 1835.

It appears that the application was made by Antonio Chavez to the provincial deputation, and was by it referred to the political chief or governor, who made a verbal report upon the same, and thereupon, by a resolution of the deputation, title was ordered to be issued to him and he was ordered to be placed in possession of the property. The only possible authority that the provincial deputation had over the public lands was a supervisory power over the *ayuntamientos* and *alcaldes*, who were called upon to make allotments of lands for the purposes of building houses and cultivation within the outboundaries of what are called *pueblo* and sometimes community grants.

If therefore we are to look to the law of August 18, 1824, for authority, the grant having been made in March, 1825, the possession claimed to have been given in April, 1825, it should appear that some regulation under the sixteenth article of the colonization law had been promulgated by the executive, but I do not believe that it has been contended, at any stage of this litigation, in California or here, that any action on the part of the executive branch of the Mexican Government looking to the disposition of the public lands in the Territories had ever been taken prior to November 21, 1828; therefore it must resolve itself to the fact that within the Territories between August 18, 1824, and November 21, 1828, there was no Territorial official or official body authorized to dispose of the public lands for the nation. It is true the executive could have authorized any one he saw proper to designate, but it fully appears that he did not exercise this power.

Under this colonization law and the regulations of 1828 the grant could not be sustained, because it was improperly initiated and emanated from a source that was prohibited from making it. This court, in both the Vallejo and Vigil cases, *supra*, took strong grounds in holding that in order for a title to be lawfully derived from the Republic of Mexico it must have been initiated by the governor and afterwards approved by the territorial deputation, and that initiating title before the territorial deputation, although the governor was president of that body and might have participated in its actions, and although that body may have asked his advice, still, as the law was a limitation upon the powers of

the governor, titles could not be recognized that at least did not reasonably conform to such regulations. It seems to me, from the recitals of the title papers, and bearing in mind the quantity of land claimed, about 138,000 acres, that the grant would have been in direct violation of the twelfth article of the law of August 18, 1824, which was, to some extent at least, a limitation upon the powers of the chief executive himself.

It was contended upon the trial by counsel for plaintiff that he was entitled to have the grant confirmed under the sixth section of the act creating the Court of Private Land Claims as an equitable claim; that Antonio Chavez had been in possession of the property for twenty-three years, and even if he were there merely by permission or under a license, still an occupation for that length of time would vest in him such an equity as would entitle him to a confirmation. In the first place, it is clearly shown by the testimony that Antonio Chavez never during his lifetime, nor did anyone for him prior to the treaty of Guadalupe Hidalgo, cultivate a single foot of the land, nor was it occupied by settlers or colonists under him so as to prevent the incursions of savages from the west as he promised, nor did he ever occupy it except as grazing ground and that in common with all the other people living at Socorro and Sevilleta. It appears that he herded his flocks upon it and all over the adjoining country, but he did not confine himself to his own grant nor did he keep others out. He built a few corrals over on the Rio Grande River and abandoned them whenever occasion required, but not a single promise that he made in his petition did he attempt to keep.

The first effort that was made to do anything by way of cultivation upon the grant was by Anastacio Garcia, his grantee, subsequent to the treaty of Guadalupe Hidalgo, and I desire to remark here that this court has repeatedly held that rights acquired by possession or otherwise subsequent to the treaty can not inure to the benefit or aggrandizement of the title at that time. The Government obligated itself by the treaty to protect private rights of property as they existed at that time; and lapse of time since the treaty, occupation, cultivation, improvement, and the investment of money are under our laws and not under Mexican law, and therefore can not inure to the benefit of a Spanish or Mexican land-grant title.

Under the laws of the Indies the vacant public lands were authorized to be used by owners of stock for grazing purposes. They were authorized to build their corrals on the same and erect their huts for the purpose of taking care of their flocks, and where they did so, and procured water near where they were grazing and had their corrals, they were protected in the use of the land; but it was never deemed and never has been contended that such use and occupation of the public domain, authorized by law specifically, ever vested in the occupant and user any interest, either legal or equitable, against the Crown. The occupation that Antonio Chavez made of this grant was only such occupation as was given to all the public domain lying along the Rio Grande and adjacent thereto, wherever grass and water could be obtained. Therefore I contend that under the testimony the use and occupation of this property by Antonio

Chavez and those claiming under him prior to the treaty complied neither with the letter nor spirit of the consideration which he was to give to the Mexican Government for a grant of 138,000 acres of land. It has been held by this court, and properly so, I think, that stock raising and grazing of land is very unsatisfactory evidence of possession—use and occupation such as was intended by the laws of the Indies and the laws of Mexico in consideration of grants for agriculture and other purposes. (See *De Arquello v. United States*, 18 How., 539; *United States v. Teshmaker*, 22 How., 392.)

A large amount of testimony was offered by the plaintiff and the Government with a view of fixing the location of the west boundary of this grant. It was contended by the plaintiff that the Ojo de la Jara (Willow Spring), called for as the west boundary, was about 23 miles west of the Rio Grande, up in the mountains, and as stated by one of the witnesses, over in the Navajo country, where, I may remark, a Mexican seldom ever went except in recent years. It was contended by the Government that the Ojo de la Jara mentioned in the act of possession was situate about in the middle of the grant as it is now surveyed, and is known to-day as the Ariveche Spring, the name being changed by reason of the Indians having killed a sheep-herder at that place. Considering that the petition was for the Arroyo San Lorenzo tract, and that this *arroyo* was the draw down which the Indians came when they came from the Navajo country on their raids, it seems to me, heeding the topography as well as the testimony, that the Ojo de la Jara,

afterwards called the Ariveche Spring, is the proper location for the west boundary of the grant, which would reduce the extent of this grant of about 138,000 acres to about 20,000 or 25,000 acres.

But I contend that the grant is void for want of authority on the part of the provincial deputation to make the same, and that there was no such occupation and cultivation of the property as would satisfy the requirements of the eighth subdivision of section 13 of the act of 1891, creating the Court of Private Land Claims, and that there are no equities in the title by reason of any cultivation or occupancy of the land by Antonio Chavez that would have authorized him to call upon the Mexican Government to recognize his title, and therefore he has no right to call upon this Government to do so.

I respectfully call the attention of the court to the opinion of a majority of the court, written by Mr. Justice Murray (Rec., 113), and with that opinion, and the observations I have made, I respectfully submit the case.

Respectfully submitted.

HOLMES CONRAD,

Solicitor-General.

MATTHEW G. REYNOLDS,

Special Assistant to the Attorney-General.

